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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/577,386
Filing Date: May 23, 2000
Appellant(s): LESSWING ET AL.

Jody C. Bishop
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed July 24th , 2007 appealing from the Office action mailed on January 24th , 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5704044	TARTER et al.	12-1997
6529876	DART et al.	3-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-11 and 24-86 are rejected under U.S.C. 103. This rejection is set forth in the prior Office Action mailed on 1/24/07. The rejection is set forth below as it appears in the previous Office Action mailed on 1/24/07.

Claims 1-11 and 24-86 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tarter in view of Dart et al (6,529,876).

(A) As per claim 1, Tarter discloses a computer-implemented method of repricing an electronically received reimbursement claim (Co1.13, lines 44-67 to Co1.14, line 65) under at least one contract comprising: providing programming code for converting each contract into a plurality of terms and a contract identifier code, each term, of the plurality of terms, containing qualification codes, calculation codes and at least two priority notes, and arranging the plurality of terms, of said contract, into a sequential series of

terms (Co1.15; lines 7-65); providing programming code for converting the reimbursement claim into a series of claim lines, each claim line containing a claim code, a unit number and a corresponding charge (Co1.15, lines 7-67); providing programming code for sequentially comparing each claim code, of the series of claim lines, against each qualification code, of the plurality of terms and when a claim code, of a claim line, is substantially equal to a qualification code, of a term, identifying said term as a matching term associated to said claim line (Col.13, lines 44-67 to Col.14, line 67; Col.15, lines 1-39).

Tarter does not explicitly disclose providing programming code for determining any priority conditions associated to all of the matching terms, and eliminating any matching terms that are excluded by said priority conditions; and providing programming code for determining a reimbursement amount for the claim by processing the calculation codes of the non-eliminated matching terms.

However, these features are known in the art, as evidenced, by Dart. In particular, Dart suggests providing programming code for determining any priority conditions associated to all of the matching terms, and eliminating any matching terms that are excluded by said priority conditions; and providing programming code for determining a reimbursement amount for the claim by processing the calculation codes of the non-eliminated matching terms (See Dart, Col.3, lines 13-67 to Col.4, line 63).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the features of Dart within the system of Tarter with the motivation of providing a method and apparatus to maximize efficiency and accuracy for

the provider in determining and documenting correct Evaluation and Management CPT code (E & M code or E & M coding) as required for agency reimbursement for health care delivered (See Dart, Col.2, lines 5-11).

(B) As per claim 2, Tarter discloses the computer-implemented method wherein the programming code for determining any priority conditions include: programming code for categorizing the terms, of the sequential series of terms, into pre-defined sections, wherein the pre-defined sections have a hierarchy that lists a pre-defined section having priority over another pre-defined section prior to said other pre-defined section (Fig.17A; Co1.19; lines 40-67 to Co1.20; line 38).

(C) As per claim 3, Tarter discloses the computer-implemented method wherein the programming code for determining any priority conditions further include: programming code for arranging the terms, within each pre-defined section, by a reverse hierarchy, which sequential lists a term, having priority over another term, subsequent to said other term (Co1.19, lines 40-67 to Col.20; line 38).

(D) As per claim 4, Tarter discloses the computer-implemented method wherein the step of sequentially comparing further includes: when a claim code, of a claim line, is substantially equal to a qualification code of a term, programming code for identifying the pre-defined section in which the term is categorized under as a governing pre-

defined section for said claim line (Co1.13, lines 44-67 to Co1.14, line 67; Co1.15, lines 1-39); programming code for sequentially comparing the claim code of said claim line, only against the qualification codes, of each term categorized under said governing pre-defined section (Fig.44A; Co1.13, lines 44-67 to Co1.14, line 67; Co1.15, lines 1-39); and when the claim code of said claim line is substantially equal to a qualification code, of a term categorized under said governing pre-defined section, programming code for identifying said term as a matching term associated to said claim line (Co1.13, lines 44-67 to Co1.14, line 67; Co1.15, lines 1-39).

(E) As per claim 5, Tarter discloses the computer-implemented method wherein the step of determining the reimbursement amount includes: programming code for determining a reimbursement charge for each claim line associated to a non-eliminated matching term (Col.5, lines 38-67 to Col.6, line 31); and programming code for adding the reimbursement charges for said claim lines, whereby the reimbursement amount for the claim is the addition of the reimbursement charges (Col.5, lines 38-67 to Col.6, line 31).

(F) As per claim 6, Tarter discloses the computer-implemented method wherein when a priority note, of a non-eliminated matching term, indicates that the calculation codes, of said non-eliminated matching term, apply to the entire claim, programming code for making the reimbursement amount for the claim equal to the reimbursement

charge for the claim line associated to said non-eliminated matching term (Col.5, lines 38-67 to Col.6, line 31).

(G) As per claim 7, Tarter discloses the computer-implemented method wherein when a term, indicates that the calculation codes, of said term, apply to the reimburse amount of the claim, the method further including: programming code for determining the reimbursement amount of said claim (Col.13, lines 44-67 to Col.14, line 65); and when the qualifications of said term are satisfied, programming code for re-calculating the reimbursement amount based upon the calculation codes of said term (Col.13, lines 44- 67 to Col.14, line 65).

(H) As per claim 8, Tarter discloses the computer-implemented method wherein the step of converting the claim further includes the step of programming code for associating the claim to a claim identifier code (Col.37, lines 24-67 to Col.38, line 67; Col.44; lines 30-67).

(I) As per claim 9, Tarter discloses the computer-implemented method further including: programming code for comparing the claim identifier code, against the contract identifier code, of each contract, and when the claim identifier code is substantially equal to a contract identifier code, of a contract, identifying said contract as a governing contract, wherein the repricing of said claim is repriced only against said governing contract (Col.13, lines 44-67 to Col.14, line 67; Col.15, lines 1-39).

(J) As per claim 10, Tarter discloses the computer-implemented method wherein the step of repricing the claim against said governing contract further includes: when at least two contracts are identified as governing contracts, programming code for repricing said claim against each governing contract creating a list of governing reimbursement amounts (Col.39, lines 1-67 to Col.40; line 67).

(K) As per claim 11, Tarter discloses the computer-implemented method further comprising: programming code for determining a lowest governing reimbursement amount, of the list of governing reimbursement amounts, wherein the lowest governing reimbursement amount is the reimbursement amount of said claim (Col.44; lines 30-48).

(L) Claim 24 differs from claim 1 by reciting an article of manufacture comprising: a computer usable medium having computer readable program code.

As per this limitation, it is noted that Tarter embodied therein for repricing a reimbursement claim against at least one contract, said claim containing a claim identifier, a plurality of claim lines and a total charge, said contract containing a contract identifier and a plurality of contractual terms, the computer readable program code means in the article of manufacture (Col.1, lines 19-67 to Col.2, line 67; Col.13, lines 44-67 to Col.14, line 65) comprising: computer readable program code means for causing a computer to generate a rate sheet which represents a contract, of the at least

one contract, the rate sheet containing one or more rate terms that represent the contractual terms of said contract, and containing a rate identifier code that represents the contract identifier of said contract (Col.13, lines 44-67 to Col.14, line 65); computer readable program code means for causing a computer to generate the claim, the claim having a claim identifier codes and a series of claim lines, each claim line including a claim code, a unit number and a code charge (Col.15, lines 7-67 to Col.16, line 31); computer readable program code means for causing a computer to reprice the claim against a rate sheet, and to generate and assign a reimbursement amount to said repriced claim (Col.15, lines 7-67 toCol.16, line 31) and Dart discloses computer readable program code means for causing a computer to graphically display the reimbursement amount of the repriced claim (See Dart, Col.10, lines 60-67 to Col.11, line 34), and a difference between the total charge of the claim and the reimbursement amount of the repriced claim (See Dart, Col.2, lines 5-45).

Thus, it is readily apparent that these prior art systems utilize a computer- readable program code to perform their specific function.

The remainder of claim 24 is rejected for the same reasons given above for claim 1, and incorporated herein.

(M) As per claim 25, Tarter discloses the article of manufacture wherein the computer readable program code means for causing a computer to generate a rate sheet further includes: computer readable program code means for causing a computer to assign qualification codes, calculation codes and at least one priority note to each

rate term, and to arrange said rate terms into a sequential series of terms (Col.13, lines 1-67 to Col.14, line 67; Col.15, lines 1-39).

(N) As per claim 26, Tarter discloses the article of manufacture wherein the computer readable program code means for causing a computer to generate a rate sheet further includes: computer readable program code means for causing a computer to graphically convey the rate sheet by displaying the sequential series of terms in an English language representation (Col.4, lines 8-67 to Col.5, line 37).

(O) As per claim 27, Tarter discloses the article of manufacture wherein the computer readable program code means for causing a computer to generate a rate sheet further includes: computer readable program code means to generate and display each rate term as a English language paragraph with a series of data entry panels interspersed in the paragraph, the data entry panels prompting a user to define the calculation codes, qualification codes and priority codes for each rate term (Col.4, lines 8-67 to Col.5, line 37).

(P) As per claim 28, Tarter discloses the article of manufacture wherein the computer readable program code means for repricing the claim against a rate sheet further includes: computer readable program code means causing a computer to sequentially compare each claim code, included in the series of claim lines, against each qualification code, of each rate term (Col.4, lines 8-67 to Co1.5, line 37; Co1.13, lines 1-67 to Co1.14,

line 35); and when a claim code of a claim line is substantially equal to a qualification code, of a rate term, the computer readable program code means causing a computer to identify said rate term as a matching rate term associated to said claim line (Col.4, lines 8-67 to Col.5, line 37; Col.13, lines 1-67 to Col.14, line 35); computer readable program code means causing a computer to determine any priority conditions associated to the matching rate terms and to eliminate any matching rate terms that are excluded by said priority conditions defining a series of remaining matching rate terms (Col.4, lines 8-67 to Col.5, line 37; Col.13, lines 1-67 to Col.14, line 35); and computer readable program code means causing a computer to compute the reimbursement amount from the calculation odes of the remaining matching rate terms (Col.4, lines 8-67 to Col.5, line 37; Co1.13, lines 1-67 to Co1.14, line 35).

(Q) As per claim 29, Tarter discloses the article of manufacture wherein the computer readable program code means for causing a computer to generate a rate sheet further includes: computer readable program code means to categorize the rate terms, of the rate sheet, in pre-defined sections, the pre-defined sections have a hierarchy sequence that assigns priority conditions to the rate terms categorized therein (Co1.13, lines 1-67 to Co1.14, line 35).

(R) As per claim 30, Tarter discloses the article of manufacture wherein the article of manufacture computer readable program code means causing a computer to assign priority conditions to the priority codes of the rate terms categorized within one of the

pre-defined sections, said priority conditions defining a priority sequence of said rate terms (Co1.13, lines 1-67 to Co1.14, line 35).

(S) As per claim 31, Tarter discloses the article of manufacture wherein the computer readable program code means for causing a computer to sequentially compare each claim code further includes: when a claim code, of a claim line, is substantially equal to a qualification code, of a rate term, the computer readable program code means causing a computer to identify the pre-defined section in which the rate term is categorized under as a governing pre-defined section for said claim line (Co1.13, lines 1- 67 to Co1.14, line 35); computer readable program code means causing a computer to sequentially compare the claim code of said claim line, against only the qualification codes, of each rate term categorized under said governing pre-defined section (Co1.13, lines 1-67 to Co1.14, line 67); and when the claim code of said claim line is substantially equal to a qualification code, of a term categorized under said governing pre-defined section, the computer readable program code means causing a computer to identify said term as a matching term associated to said claim line (Co1.13, lines 1-67 to Co1.14, line 67).

(T) As per claim 32, Tarter discloses the article of manufacture wherein the article of manufacture further includes: computer readable program code means causing a computer to compare the claim identifier against the rate identifier code and to identify rate sheet as a governing rate sheet which has a rate identifier code substantially equal

to the claim identifier (Co1.15, lines 1-67 to Co1.16, line 31); and computer readable program code means causing a computer to reprice the claim only against a governing rate sheet (Co1.15, lines 1-67 to Co1.16, line 31).

(U) As per claim 33, Tarter discloses the article of manufacture wherein the article of manufacture further includes: when at least two rate sheets are identified as governing rate sheets, computer readable program code means causing a computer to reprice the claim against each governing rate sheet and to create a list of governing reimbursement amounts (Co1.14, lines 24-67 to Co1.15, line 67; Co1.16, lines 1-31).

(V) As per claim 34, Tarter discloses the article of manufacture wherein the article of manufacture further includes: computer readable program code means causing a computer to receive an input from an user to direct the computer to assign either the highest or lowest governing reimbursement amount, from the list of governing reimbursement amounts, as the reimbursement amount of the repriced claim (Co1.43, lines 58-67 to Co1.44; lines 30-48).

(W) As per claim 35, Tarter discloses the article of manufacture wherein the article of manufacture computer further includes: computer readable program code means for causing a computer to store in a repriced claim storage location a repriced claim along with the reimbursement amount of said repriced claim, said repriced claim includes the

claim identifier code and claim lines associated to said repriced claim (Col.43, lines 58-67 to Col.44; lines 30-48).

(X) As per claim 36, Tarter discloses the article of manufacture wherein the article of manufacture computer readable program code means for causing a computer to compare the claim identifier code, of a claim, against the claim identifier code, of each repriced claim, stored in the repriced claim storage location; then the claim identifier code, of said claim, is substantially equal to the claim identifier code, of a repriced claim, the computer readable program code means causing a computer to combine the claim lines of said claim with the claim lines of said repriced claim to create a bundled claim (Co1.25, lines 60-67 to Co1.26; line 67); and computer readable program code means for causing a computer to reprice the bundled claim and rewrite said repriced claim with the repriced bundled claim (Co1.25, lines 60-67 to Co1.26; line 67).

(Y) As per claim 37, Tarter discloses the article of manufacture wherein the article of manufacture further includes: computer readable program code means causing a computer to store in a rate sheet storage location the calculation codes, qualification codes and priority codes of a rate sheet (Col.28, lines 1-67 to Col.29, line 67).

(Z) As per claim 38, Dart discloses the article of manufacture wherein the article of

manufacture further includes: computer readable program code means causing a computer to store in a claim storage location the claim lines of a claim (See Dart, Col.12, lines 1-35).

(AA) As per claim 39, Tarter discloses the article of manufacture wherein the article of manufacture includes: computer readable program code means causing a computer to store in an identifier storage location a plurality of identifier codes substantially equal to the rate identifier codes, of each rate sheet, and the claim identifier codes, of each claim (Co1.37, lines 24-67 to Col.38, line 44); and computer readable program code means causing a computer to logically link each claim having a claim identifier code and each rate sheet having a rate identifier code that are substantially equal to a single identifier code, of the plurality of identifier codes (Col.37, line 1-67 to Col.38, line 67); and computer readable program code means causing a computer to receive inputs from a user, said inputs to cause the computer to access the identifier storage location and to change an identifier code, of the plurality of identifier codes, whereby each claim and each rate sheet logically linked to said identifier code is automatically changed (Col.37; lines 23-67 to Col.38; Col.39; lines 1-61).

(BB) Claim 40 differs from claims 1 and 24 by reciting (1) each claim containing at least one claim line, each claim line being defined by claim codes, a unit number and a corresponding charge, and (2) each contract containing at least one contractual term.

As per this limitation, it is noted that Tarter discloses a computer-implemented method for repricing a reimbursement claim against under at least one contract (Co1.13, lines 44-67 to Co1.14, line 65), each contractual term being defined by qualification codes, calculation codes, the method for repricing comprising: comparing each claim code, of the claim, against each qualification code, of each contractual term, of a contract (Co1.13, lines 44-67 to Co1.14, line 67; Co1.15, lines 1-39); when a qualification code, of a contractual term, is satisfied by a claim code, of a claim line, identifying said contractual term as a matching contractual term associated to said claim line, and creating a list of all matching contractual terms (Co1.13, lines 44-67 to Co1.14, line 67) and Dart discloses determining any priority conditions associated to the matching contractual terms, and eliminating any matching contractual terms, from said list of matching terms that are excluded by said priority conditions (See Dart, Col.10, lines 60-67 to Col.11, line 34); and determining a reimbursement charge for each claim line associated to a non-eliminated matching term, and adding the reimbursement charges for said claim lines, wherein the reimbursement amount for the claim is the addition of said reimbursement charges (See Dart, Col.2, lines 5-45).

Thus, it is readily apparent that these prior art systems utilize one contractual term to perform their specific function.

The remainder of claim 40 is rejected for the same reasons given above for claims 1 and 24, and incorporated herein.

(CC) As per claim 41, Tarter discloses the computer-implemented method further

comprising: storing each contract on a network contract storage location, the network storage location containing a plurality of contract sets, each contract set associated to a set identifier, each contract further including a contract identifier and a set identifier, wherein each contract containing a set identifier substantially equal to a set identifier of a contract set, is stored within said contract set (Col.2, lines 1-67 to Co1.3, line 30); identifying each claim with a set identifier and a claim identifier (Col.3; lines 32-67); comparing the set identifier of a claim against the set identifier, of each contract set, when the set identifier of a claim is substantially equal to the set identifier of a contract set, identifying said contract set as a governing contract set (Co1.13, lines 44-67 to Co1.14, line 67; Co1.15, lines 1-39); comparing the claim identifier of said claim against the contract identifiers of each contract, stored within said governing contract set, and when the claim identifier of said claim is substantially equal to the contract identifier of a contract, stored within said governing contract set, identifying said contract as a governing contract (Col.2, lines 1-67 to Col.3, line 30); and determining the reimbursement amount of said claim only against said governing contract (Col.3, lines 1-67).

(DD) As per claim 42, Tarter discloses the computer-implemented method wherein the priority conditions further includes: categorizing the contractual terms, of each contract, into a set of sequentially listed pre-defined sections, wherein the pre-defined sections have a hierarchy that lists a pre-defined section, having priority over other pre-defined

sections, before said other pre-defined sections (Fig.17A; Co1.19; lines 40-67 to Col.20; line 38).

(EE) As per claim 43, Tarter discloses the computer-implemented method wherein the priority conditions further includes: arranging the contractual terms, categorized in each pre-defined section, in a reverse hierarchy, wherein a contractual term having priority over other contractual terms is listed subsequent said other contractual terms (Co1.19, lines 40-67 to Col.20; line 38).

(FF) As per claim 44, Tarter discloses the computer-implemented wherein the computer readable program code means for causing a computer to sequentially compare each claim code further includes: when a claim code, of a claim line, is substantially equal to a qualification code, of a contractual term, the computer readable program code means causing a computer to identify the pre-defined section in which the contractual term is categorized under as a governing pre-defined section for said claim line (Co1.13, lines 1-67 to Co1.14, line 35); computer readable program code means causing a computer to sequentially compare the claim code of said claim line, against only the qualification codes, of each contractual term categorized under said governing pre-defined section (Co1.13, lines 1-67 to Co1.14, line 67); and when the claim code of said claim line is substantially equal to a qualification code, of a term categorized under said governing pre-defined section, the computer readable program

code means causing a computer to identify said contractual term as a matching contractual term associated to said claim line (Co1.13, lines 1-67 to Co1.14, line 67).

(GG) As per claim 45, Tarter discloses the computer-implemented method wherein the priority conditions include a claim priority condition which eliminates any matching contractual terms that is listed in a predefined section that is excluded by the claim priority condition (Co1.13, lines 44-67 to Co1.14, line 67; Co1.15, lines 1-39).

(HH) As per claim 46, Tarter discloses the computer-implemented method wherein when one of the priority notes associated to a matching contractual term indicates that said matching contractual term reprices the entire claim, eliminating all other matching contractual terms (Co1.5, lines 18-67 to Col.6, line 32).

(II) As per claim 47, Tarter discloses the computer-implemented method wherein the reverse hierarchy is determined by the priority notes associated to each contractual term, categorized in a pre-defined section (Fig.17A; Co1.19; lines 40-67 to Col.20; line 67).

(JJ) As per claim 48, Tarter discloses the computer-implemented method wherein the step of repricing further includes: comparing the claim identifier code against the contract identifier code, of each contract, wherein when the claim identifier code is

substantially equal to a contract identifier code, of a contract, identifying said contract as a governing contract (Co1.2, lines 1-67 to Co1.3, line 30); and determining a reimbursement amount of the claim only against the governing contract (Col.3, lines 1-67).

(KK) As per claim 49, Tarter discloses the computer-implemented method wherein the step determining a reimbursement amount for the claim against the governing contract includes: when at least two contracts are identified as governing contracts, repricing said claim against each governing contract creating a list of governing reimbursement amounts, wherein the reimbursement amount of said claim is the lowest governing reimbursement amount (Col.43, lines 58-67 to Co1.44; lines 30-48).

(LL) As per claim 50, Dart discloses the computer-implemented method further including: storing the reimbursement amount of a claim and storing said claim as a repriced claim (See Dart, Col.10, lines 60-67 to Col.11, line 34).

(MM) As per claim 51, Dart discloses the computer-implemented method wherein prior to determining the reimbursement amount for a claim the method including: comparing the claim identifier code, of said claim, against the claim identifier codes, of all stored repriced claims (See Dart, Col.10, lines 60-67 to Col.11, line 34); when the claim identifier code, of said claim is substantially equal to the claim identifier codes, of a stored repriced claim, combining the claim lines of said claim with the claim line of

said repriced claim creating a bundled claim (See Dart, Col.10, lines 60-67 to Col.11, line 34); determining the reimbursement amount of the bundled claim, instead of determining the reimbursement amount of said claim (See Dart, Col.10, lines 60-67 to Col.11, line 34); and rewriting the reimbursement amount of the stored repriced claim with the reimbursement amount of the bundled claim and rewriting the stored claim with the bundled claim (See Col.10, lines 60-67 to Col.11, line 34).

(NN) As per claim 52, Tarter discloses the computer-implemented method further comprising: tracking the priority conditions associated to the non-eliminated matching terms (See Tarter, Col.5, lines 18-67 to Col.6, line 32); and displaying said priority conditions along with the reimbursement charge of the claim lines associated with said non-eliminated matching terms (Co1.3, lines 10-67).

(OO) Claim 53 differs from claims 1, 24 and 40 by reciting computer readable program code embodied therein for configuring a contract.

As per this limitation, it is noted that Tarter discloses an article of manufacture comprising: a computer usable medium containing contractual terms, for repricing a reimbursement claim (Co1.1, lines 19-67 to Col.2, line 67; Co1.13, lines 44-67 to Co1.14, line 65) the computer readable program code means in the article of manufacture comprising: computer readable program code means for causing a computer to generate a rate sheet representing the contractual terms of said contract, the rate sheet containing identifier codes, and one or more rate terms (Co1.13, lines 44-

67 to Co1.14, line 65) and Dart discloses a computer readable program code means for causing a computer to arrange the rate terms in a sequential series of terms; and computer readable program code means for graphically conveying the rate sheet by displaying the sequential series of terms in an English language representation (See Dart, Col.2, lines 5-59).

Thus, it is readily apparent that these prior art systems utilize computer readable program code embodied therein for configuring a contract to perform their specific function.

The remainder of claim 53 is rejected for the same reasons given above for claims 1, 24 and 40, and incorporated herein.

(PP) As per claim 54, Tarter discloses the article of manufacture wherein the article of manufacture further includes: computer readable program code means to generate and display each rate term as a English language paragraph with a series of data entry panels interspersed in the paragraph, the data entry panels prompting a user to define calculation codes, qualification codes and priority codes for each rate term (Co1.4, lines 8-67 to Co1.5, line 37).

(QQ) As per claim 55, Tarter discloses the article of manufacture wherein the article of manufacture further includes: computer readable program code means to categorize the rate terms, of the rate sheet, in pre-defined sections, wherein the pre-defined sections have a pre-defined hierarchy sequence that assigns a priority to the rate terms

categorized therein when repricing a claim (Col.43, lines 58-67 to Col.44; lines 30-48).

(RR) As per claim 56, Tarter discloses the article of manufacture wherein the English language paragraph describes the qualification and calculation of the rate term when repricing a medical reimbursement claim (Co1.44; lines 30-48).

(SS) As per claim 57, Tarter discloses the article of manufacture wherein the priority codes define a priority sequence to the rate terms within a pre-defined section, of said pre-defined sections (Fig.17A; Co1.19; lines 40-67 to Co1.20; line 38).

(TT) As per claim 58, Tarter discloses the article of manufacture wherein the article of manufacture further includes: computer readable program code means to permit a user to edit the calculation codes, qualification codes and priority codes of a rate term of the rate sheet (Co1.28, lines 1-67 to Col.29, line 67).

(UU) As per claim 59, Tarter discloses the article of manufacture wherein the article of manufacture further includes: computer readable program code means to store a rate sheet, in a data center containing a plurality of networks, each network containing a plurality of rate sheets, similarly configured (Co1.2, lines 1-67 to Col.3, line 30); and when the identifier codes of a rate sheet identifier a specific network, of the plurality of networks, the computer readable program code means stores said rate sheet in the specific network (Co1.2, lines 1-67 to Co1.3, line 30).

(VV) Claim 60 differs from claims 1, 24 and 53 by reciting a method for electronically representing a reimbursement contract between an insurer and a service provider.

As per this limitation, it is noted that Tarter discloses the method comprising: generating information, stored to computer-readable medium, representing at least one term of said reimbursement contract (See Tarter Co1.1 ,lines 19-67 to Col.2, line 67; Co1.13, lines 44-67 to Co1.14, line 65) and Dart discloses associating with said at least one term, information, stored to computer-readable medium (See Dart, Col.), representing at least one qualifier having a corresponding calculation method, wherein the at least one qualifier identifies at least one condition to be satisfied by a claim for reimbursement in order to trigger the corresponding calculation method (Col.20, lines 6-68).

Thus, it is readily apparent that these prior art systems utilize a method for electronically representing a reimbursement contract between an insurer and a service provider to perform their specific function.

The remainder of claim 60 is rejected for the same reasons given above for claims 1, 24, 40 and 53, and incorporated herein.

(WW) As per claim 61, Dart discloses the method wherein the generated information represents a plurality of terms of said reimbursement contract, further comprising: associating, with each of said plurality of terms, information, stored to computer-readable medium, representing a priority of such term relative to the other terms

(See Fig.16, Col.19, lines 1-18).

(XX) As per claim 62, Dart discloses the method wherein if the corresponding at least one qualifier for multiple ones of the plurality of terms is satisfied by said claim, the priority information is usable to determine the term having the highest priority (See Dart, Col.3, lines 1-35).

(YY) As per claim 63, Dart discloses the method wherein the corresponding calculation method for the satisfied at least one qualifier of the term determined to have the highest priority is triggered for computing a reimbursement amount for the claim (See Dart, Col.3, lines 1-35).

(ZZ) As per claim 64, Dart discloses the method comprising: associating, with said at least one term, information, stored to computer-readable medium (See Fig.16), representing a plurality of different qualifiers that each have a different calculation method associated therewith, wherein each of the different qualifiers identifies a different condition to be satisfied by a claim for reimbursement in order to trigger its respective associated calculation method (See Dart, Col.1, lines 19-56).

(AAA) Claim 65 differs from claims 1, 24, 40, 53 and 60 by reciting computer-executable software code stored to a computer-readable medium.

As per this limitation, it is noted that Tarter discloses the computer-executable software code comprising: code for defining at least one term of a contract for reimbursement by an insurer (See Tarter, Co1.3, lines 10-62) and Dart discloses code for associating with the at least one term a qualification having a corresponding calculation method, wherein the qualification identifies when a received claim for reimbursement qualifies for reimbursement, under the term with which the qualification is associated, according to the corresponding calculation method (See Dart, Col.3, lines 17-67).

Thus, it is readily apparent that these prior art systems utilize computer-executable software code stored to a computer-readable medium to perform their specific function.

The remainder of claim 65 is rejected for the same reasons given above for claims 1, 24, 40, 53 and 60, and incorporated herein.

(BBB) As per claim 66, Dart discloses the computer-executable software code wherein said code for defining at least one term of a contract comprises code defining a plurality of terms of said contract (See Dart, Col.1, lines 19-67).

(CCC) As per claim 67, Dart discloses the computer-executable software code further comprising: code for receiving information about a claim submitted for reimbursement (See Dart,Col.1, lines 19-56); and code for determining at least one term having a qualification that is satisfied by said claim (See Dart, Col.1, lines 1-56).

(DDD) As per claim 68, Dart discloses the computer-executable software code wherein said code for associating comprises: code for associating with a first term of said contract a first qualification having a corresponding first calculation method (See Dart, Col.3, lines 48-67); and code for associating with said first term of said contract a second qualification having a corresponding second calculation method (See Dart, Col.3, lines 48-67).

(EEE) As per claim 69, Dart discloses the computer-executable software code further comprising: code for receiving information about a claim submitted for reimbursement (See Dart, Col.1, lines 18-56); code for determining whether said first term and its associated first qualification are satisfied by said claim (See Col.1, lines 18-56); code for determining whether said first term and its associated second qualification are satisfied by said claim (See Col.1, lines 18-56); code for computing a reimbursement amount for said claim according to the first calculation method if said claim satisfies said first term and its associated first qualification (See Col.1, lines 18-56); code for computing a reimbursement amount for said claim according to the second calculation method if said claim satisfies said first term and its associated second qualification (See Col.1, lines 18-56).

(FFF) As per claim 70, Dart discloses the computer-executable software code further

comprising: code for receiving selection of any one or more attributes of a claim for reimbursement to be used in defining said at least one term of a contract (See Dart, Col.1, lines 18-56).

(GGG) Claim 71 differs from claims 1, 24, 40, 53, 60 and 65 by reciting computer-executable software code stored to a computer-readable medium.

As per this limitation, it is noted that Tarter discloses the computer-executable software code comprising: code for generating a user interface providing a phrase describing a term of a contract for reimbursement, wherein said phrase includes at least one input field for receiving input from a user (See Tarter, Col.3, lines 10-62) and Dart discloses code for generating information, stored to computer-readable medium, representing said at least one term of said reimbursement contract based at least in part on information input to said at least one input field (See Dart, Col.3, lines 1-35).

Thus, it is readily apparent that these prior art systems utilize computer-executable software code stored to a computer-readable medium to perform their specific function.

The remainder of claim 71 is rejected for the same reasons given above for claims 1,24, 40, 53, 60 and 65 and incorporated herein.

(HHH) As per claim 72, Dart discloses the computer-executable software code wherein said contact for reimbursement is a contract for reimbursement by an insurer (See Dart, Col.1, lines 18-35).

(III) As per claim 73, Dart discloses the computer-executable software code wherein said phrase includes at least one sentence (See Col.3, lines 1-35).

(JJJ) As per claim 74, Dart discloses the computer-executable software code wherein upon input to said at least one input field, said phrase forms at least one complete sentence (See Col.3, lines 1-35).

(KKK) As per claim 75, Dart discloses the computer-executable software code wherein said at least one input field includes a drop-down menu providing a plurality of choices for selection of input to such field (See Col.3, lines 1-35; Col.5, lines 10-38).

(LLL) As per claim 76, Dart discloses the computer-executable software code wherein said code for generating information representing said at least one term of said reimbursement contract comprises: code for associating, with said at least one term, information, stored to computer-readable medium, representing at least one qualifier having a corresponding calculation method, wherein the at least one qualifier identifies at least one condition to be satisfied by a claim for reimbursement in order to trigger the corresponding calculation method (See Col.3, lines 12-67).

(MMM) As per claim 77, Dart discloses the computer-executable software code wherein said at least one input field receives information corresponding to at least one

of the group consisting of: said at least one qualifier, and said calculation method (See Col.5, lines 39-67).

(NNN) As per claim 78, Dart discloses the computer-executable software code comprising: code for generating output presenting at least one phrase describing terms of the represented contract for reimbursement (See Col.1, lines 18-56).

(OOO) As per claim 79, Tarter discloses Computer-executable software code stored to a computer-readable medium, the computer-executable software code comprising: code for defining terms of a contract for reimbursement by an insurer (See Tarter, Co1.3, lines 10-62).

Tarter does not explicitly disclose code for generating output presenting at least one phrase describing the terms of the defined contract for reimbursement.

However, this feature is known in the art, as evidenced by Dart. In particular, Dart suggests code for generating output presenting at least one phrase describing the terms of the defined contract for reimbursement (See Dart, Col.1, lines 18-56).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the features of Dart within the system of Tarter with the motivation of providing a method and apparatus to maximize efficiency and accuracy for the provider in determining and documenting correct Evaluation and Management CPT code (E & M code or E & M coding) as required for agency reimbursement for health care delivered (See Dart, Col.2, lines 5-11).

(PPP) As per claim 80, Dart discloses the computer-executable software code wherein the code for defining said terms of said contract comprise: code for associating, with each of the terms, a qualification having a corresponding calculation method, wherein the qualification identifies when a received claim for reimbursement qualifies for reimbursement, under the term with which the qualification is associated, according to the corresponding calculation method (See Col.3, lines 1-67).

(QQQ) As per claim 81, Dart discloses the computer-executable software code wherein the code for generating output comprises: code for generating output presenting said at least one phrase, wherein said at least one phrase includes at least one sentence (See Col.3, lines 1-35).

(RRR) As per claim 82, Tarter discloses a method for generating an electronic representation of a contract for receiving, by a processor-based device, input identifying at least one term of said reimbursement, the method comprising: reimbursement contract, for each of the at least one term, receiving, by said processor-based device, input identifying at least one qualification that specifies at least one condition to be satisfied in a claim for the claim to qualify for reimbursement according to the corresponding contract term (See Tarter, Co13, lines 32-67).

Tarter does not explicitly disclose for each of the at least one qualification, receiving, by said processor-based device, input identifying a corresponding calculation

method.

However, this feature is known in the art, as evidenced by Dart. In particular, Dart suggests for each of the at least one qualification, receiving, by said processor-based device, input identifying a corresponding calculation method (See Col.19, lines 8-26).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the features of Dart within the system of Tarter with the motivation of providing a method and apparatus to maximize efficiency and accuracy for the provider in determining and documenting correct Evaluation and Management CPT code (E & M code or E & M coding) as required for agency reimbursement for health care delivered (See Col.2, lines 5-11).

(SSS) As per claim 83, Dart discloses the method further comprising: said processor-based device representing each of said at least one term of said reimbursement contract by storing to a computer-readable medium the corresponding at least one qualification for each of the at least one term (See Col.5, lines 39-67).

(TTT) As per claim 84, Tarter discloses a method for determining a reimbursement amount for a claim, comprising: defining a reimbursement contract in computer-executable program code stored to a computer-readable medium, where said definition of said reimbursement contact includes information associating at least one term of the contract with at least one qualifier having a corresponding calculation method (See

Tarter Co1.3, lines 1-67).

Tarter does not explicitly disclose receiving into a processor-based device, information about a claim received for reimbursement, and said processor-based device determining a reimbursement amount for the claim based at least in part on the defined reimbursement contract.

However, this feature is known in the art, as evidenced by Dart. In particular, Dart suggests receiving into a processor-based device, information about a claim received for reimbursement, and said processor-based device determining a reimbursement amount for the claim based at least in part on the defined reimbursement contract (See Col.11, lines 1-51).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the features of Dart within the system of Tarter with the motivation of providing a method and apparatus to maximize efficiency and accuracy for the provider in determining and documenting correct Evaluation and Management CPT code (E & M code or E & M coding) as required for agency reimbursement for health care delivered (See Col.2, lines 5-11).

(UUU) As per claim 85, Tarter discloses the method wherein said reimbursement contract comprises a contract between an insurer and a service provider (Co1.1, lines 19-64).

(VVV) As per claim 86, Dart discloses the method wherein said claim for

reimbursement is a claim by a medical service provider for reimbursement from an insurer for medical services rendered (See Dart, Col.1, lines 8-56).

(10) Response to Argument

In the Appeal Brief filed on 07/24/07, Appellant makes the following arguments:

(i) The combination of Tarter and Dart fails to render the claims unpatentable.

(ii) There is no mention of qualification codes calculation codes, or priority notes in the relied upon portion of Tarter. Additionally, the relied upon portion of Tarter further fails to teach or suggest "arranging the plurality of terms, of said contract into a sequential series of terms".

(iii) Tarter does not teach or suggest "providing programming code for converting each contract into a plurality of terms and a contract identifier code, each term, of the plurality of terms, containing qualification codes and at least two priority notes".

(iv) Dart does not teach or suggest "comparing each claim code against each qualification code to identify matching terms, and determining any priority conditions associated to all of the matching terms and eliminating any matching terms that are excluded by the priority conditions.

(v) Tarter fails to mention a priority note, calculation codes, or a claim line associated to a non-eliminated matching term.

(vi) The combination of Tarter and Dart fails to teach or suggest determining a reimbursement charge for each claim line associated to a non-eliminated matching term.

(vii) Tarter fails to teach or suggest identifying a governing contract for a claim, and further fails to teach or suggest identifying at least two governing contracts against which the claim is repriced.

(viii) Tarter fails to teach or suggest computer readable program code causing a computer to generate a rate sheet which represents a contract, of the at least one contract, the rate sheet containing one or more rate terms that represent the contractual terms of the contract, and containing a rate identifier code that represents the contract identifier of the contract.

(ix) Tarter fails to teach or suggest comparing each claim code, of the claim, against each qualification code, of each contractual term, of a contract.

(x) Neither Tarter nor Dart teaches or suggests associating with each term information representing a priority of the term relative to other terms.

(xi) Neither Tarter nor Dart teaches or suggests using the priority information to determine one of a plurality of terms that is satisfied by a claim which has the highest priority.

(xii) Neither Tarter nor Dart teaches or suggests associating with a term information representing a plurality of different qualifiers that each have a different calculation method.associated therewith.

(xiii) Neither Tarter nor Dart teaches or suggests first and second qualifications, code for determining whether a term and its associated first or second qualification are satisfied by a claim, or code for computing a reimbursement amount according to a calculation method corresponding to a satisfied one of the first and second qualifications.

(xiv) Tarter and Dart fails to teach or suggest code for generating a user interface providing a phrase describing a term of a contract for reimbursement, wherein said phrase includes at least one input field for receiving input from a user.

Examiner will address Appellant arguments and related points in sequence as they appear in the Brief.

(I) With respect to Appellant first point of argument, Examiner respectfully submitted that obviousness is not determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See In *re Oetiker*, 977F. 2d 1443, 1445,24 USPQ2d 1443, 1444 (Fed. Cir. 1992); In *re Hedges*, 783F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir.1992); In *re Piaseckii*, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir.1984); In *re Rinehart*, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976). Using this standard, the Examiner respectfully submits that he has at least satisfied the burden of presenting a prima facie case of obviousness, since he has presented evidence of corresponding claim elements in the prior art and has expressly articulated the combinations and the motivations for combinations that fairly suggest Appellant's claimed invention. Note, for example, in the instant case, the Examiner respectfully notes that each and every motivation to combine the applied references are accompanied by select portions of the respective reference(s) which specially support that particular motivation and /or an explanation based on the logic and scientific reasoning of one ordinarily skilled in the art at the time of the invention that support a holding of obviousness. As such, it is not seen that the Examiner's combination of references is unsupported by the applied prior art of record. Rather, it is respectfully submitted that explanation based on the logic and scientific reasoning of one of ordinarily skilled in the art at the time of the invention that support a holding of obviousness has been adequately provided by the motivations and reasons indicated by

the Examiner, Ex parte Levengood, 28 USPQ2d 1300(Bd. Pat. App.& Inter., 4/22/93). Therefore, the combination of references is proper and the rejection is maintained.

In addition, the Examiner recognizes that references cannot be arbitrarily altered or modified and that there must be some reason why one skilled in the art would be motivated to make the proposed modifications. However, although the Examiner agrees that the motivation or suggestion to make modifications must be articulated, it is respectfully contended that there is no requirement that the motivation to make modifications must be expressly articulated within the references themselves. References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures, In *re Bozek*, 163 USPQ 545 (CCPA 1969).

The Examiner is concerned that Appellant apparently ignores the mandate of the numerous court decisions supporting the position given above. The issue of obviousness is not determined by what the references expressly state but by what they would reasonably suggest to one of ordinary skill in the art, as supported by decisions in *In re DeLisle* 406 Fed 1326, 160 USPQ 806; *In re Kell, Terry and Davies* 208 USPQ 871; and *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ 2d 1596, 1598 (Fed. Cir. 1988) (citing *In re Lalu*, 747 F.2d 703, 705, 223 USPQ 1257, 1258 (Fed. Cir. 1988)). Further, it was determined in *In re Lamberti et al*, 192 USPQ 278 (CCPA) that:

(i) obviousness does not require absolute predictability;

(ii) non-preferred embodiments of prior art must also be considered; and

(iii) the question is not express teaching of references, but what they would suggest.

According to *In re Jacoby*, 135 USPQ 317 (CCPA 1962), the skilled artisan is presumed to know something more about the art than only what is disclosed in the applied references. In *In re Bode*, 193 USPQ 12 (CCPA 1977), every reference relies to some extent on knowledge of persons skilled in the art to complement that which is disclosed therein.

According to *Ex parte Berins*, 168 USPQ 374 (Bd. Appeals), there is no statutory limitation as to the number of references that may be used to demonstrate obviousness...not what references expressly state but what they would reasonably suggest to one of ordinary skill in the art. In *In re Conrad*, 169 USPQ 170 (CCPA), obviousness is not based on express suggestion, but what references taken collectively would suggest.

Nonetheless, it is respectfully submitted that an explanation based on logic and sound scientific reasoning of one ordinarily skilled in the art at the time of the invention that support a holding of obviousness has been adequately provided by the motivations and reasons indicated by the Examiner in the previous Office Action, *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter., 4/22/93).

Furthermore, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). The skilled artisan would not consider the prior art

embodiments in a vacuum, but would have had the motivation to combine the advantageous features of the prior art in the manner purported by the Examiner for the reasons and motivations given in the prior Office Action. Thus, the teachings of Tarter and Dart when considered with the knowledge that is generally available to one of ordinary skill in the art make obvious the limitations that Applicant disputes. Therefore, Appellant's argument is not persuasive and the rejection is hereby sustained.

(ii) With respect to Appellant second argument, Examiner respectfully submitted He relied upon the clear teaching of Tarter for such a feature. Further, Examiner interprets (HMO, PPO and other government programs such as (Medicaid etc.) to have included qualification codes calculation codes, or priority notes See Tarter, Abstract, Col.2, lines 33-56; Col.14, lines 44-65) which correspond to Appellant claimed feature. Therefore, Appellant argument is not persuasive and the rejection is hereby sustained.

(iii) With respect to Appellant third argument, Examiner respectfully submitted He relied upon the clear teaching of Tarter for such a feature. Further, Examiner interprets (the summary file, the bulletin file and the accumulated transaction file, FIG.17. The information available through the help desk display screens is updated on a regular basis to be a form of providing programming code for converting each contract into a plurality of terms and a contract identifier code, each term, of the plurality of terms, containing qualification codes and at least two priority notes" See Tarter, Col. 19 lines

40-68 to Col.20, line 25) which correspond to Appellant claimed feature. Therefore, Appellant argument is not persuasive and the rejection is hereby sustained.

(iv) With respect to Appellant fourth argument, Examiner respectfully submitted He relied upon the clear teaching of Tarter for such a feature See Col.15, lines 40-68 to Col.16, line 8) which correspond to Appellant claimed feature. As such, the Examiner respectfully submitted that such terms were given their broadest reasonable interpretations during examination, and since the applied reference clearly discloses the claimed limitations, when given their broadest reasonable interpretations, it is respectfully submitted that the Examiner reliance on Tarter is indeed proper. Therefore, Appellant argument is not persuasive and the rejection is hereby sustained.

(v) With respect to Appellant fifth argument, Examiner respectfully submitted He relied upon the clear teaching of Tarter for such a feature See Col.5, lines 38-68 to Col.6, line 31) which correspond to Appellant claimed feature. As such, the Examiner respectfully submitted that such terms were given their broadest reasonable interpretations during examination, and since the applied reference clearly discloses the claimed limitations, when given their broadest reasonable interpretations, it is respectfully submitted that the Examiner reliance on Tarter is indeed proper. Therefore, Appellant argument is not persuasive and the rejection is hereby sustained.

(vi) With respect to Appellant sixth argument, Examiner respectfully submitted He relied upon the clear teaching of Dart for such a feature See Col.3, lines 6-47) which correspond to Appellant claimed feature. As such, the Examiner respectfully submitted that such terms were given their broadest reasonable interpretations during examination, and since the applied reference clearly discloses the claimed limitations, when given their broadest reasonable interpretations, it is respectfully submitted that the Examiner reliance on Tarter is indeed proper. Therefore, Appellant argument is not persuasive and the rejection is hereby sustained.

(vii) With respect to Appellant seventh argument, Examiner respectfully submitted He relied upon the clear teaching of Tarter for such a feature See Col.13, lines 44-68) which correspond to Appellant claimed feature. As such, the Examiner respectfully submitted that such terms were given their broadest reasonable interpretations during examination, and since the applied reference clearly discloses the claimed limitations, when given their broadest reasonable interpretations, it is respectfully submitted that the Examiner reliance on Tarter is indeed proper. Therefore, Appellant argument is not persuasive and the rejection is hereby sustained.

(viii) With respect to Appellant eighth argument, Examiner respectfully submitted He relied upon the clear teaching of Tarter for such a feature See Col.13, lines 44-68; Col.15, lines 19-68) which correspond to Appellant claimed feature. As such, the Examiner respectfully submitted that such terms were given their broadest reasonable

interpretations during examination, and since the applied reference clearly discloses the claimed limitations, when given their broadest reasonable interpretations, it is respectfully submitted that the Examiner reliance on Tarter is indeed proper. Therefore, Appellant argument is not persuasive and the rejection is hereby sustained.

(ix &x) With respect to Appellant ninth and tenth arguments, Examiner respectfully submitted He relied upon the clear teaching of Tarter for such a feature See Col.37, lines 24-68) which correspond to Appellant claimed feature. As such, the Examiner respectfully submitted that such terms were given their broadest reasonable interpretations during examination, and since the applied reference clearly discloses the claimed limitations, when given their broadest reasonable interpretations, it is respectfully submitted that the Examiner reliance on Tarter is indeed proper. Therefore, Appellant argument is not persuasive and the rejection is hereby sustained.

(xi &xii) With respect to Appellant eleventh and twelfth arguments, Examiner respectfully submitted He relied upon the clear teaching of Tarter for such a feature See Col.37, lines 24-68 to Col.38, line 63) which correspond to Appellant claimed feature. As such, the Examiner respectfully submitted that such terms were given their broadest reasonable interpretations during examination, and since the applied reference clearly discloses the claimed limitations, when given their broadest reasonable interpretations, it is respectfully submitted that the Examiner reliance on Tarter is indeed proper. Therefore, Appellant argument is not persuasive and the rejection is hereby sustained.

(xiii & xiv) With respect to Appellant thirteenth and fourteenth arguments, Examiner respectfully submitted He relied upon the clear teaching of Dart for such a feature See Col.9, lines 34-67) which correspond to Appellant claimed feature. As such, the Examiner respectfully submitted that such terms were given their broadest reasonable interpretations during examination, and since the applied reference clearly discloses the claimed limitations, when given their broadest reasonable interpretations, it is respectfully submitted that the Examiner reliance on Tarter is indeed proper. Therefore, Appellant argument is not persuasive and the rejection is hereby sustained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Vanel Frenel (V.F)

Patent Examiner

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September 30, 2007

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